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*John Dash*  
Applicant

Applicant: John Dash  
Application No. : 10/616,165  
Filing Date: 07/07/2003  
For: Low Temperature Nuclear Fusion  
Location of File Presumably Office of Petitions  
Petitions Examiner: David Bucci

Request For Action On Request for Reclusal ,  
A Petition to Strike Parts of the Record And  
For A Related Reconsideration or Renewal Of The Denial of  
The Petition To Director Mailed Nov. 25, 2008

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA. 22313-1450

Explanation Of Reclusal Of Office Personnel

The original "Petition to Director " in this case was filed concurrently with a Request for the reclusal of all Office personnel who have been contacted relative to the subject matter of the above noted application . This extremely unusual action was taken because of the abnormal prosecution of this case involved the application by the Office of "secret law" concerning applications pertaining to cold fusion partially set forth in "Saws" documents. These Saws policy documents relative to applications pertaining to such cases and various related matters has apparently not been publicly acknowledged.

To the best of the Applicant's knowledge no patent has as yet been issued which clearly indicates that it relates to cold fusion although the utility of this subject matter has ben widely recognized at conferences primarily directed to this subject t matter, by the publication of

many articles on this topic and by the issuance graduate degrees by recognized universities on various aspects of cold fusion. It is believed that this is because of and pursuant to a not public ally acknowledged policy by the PTO and that many "improper " things have ben done in accordance with this policy to block the issuance of patents claiming such subject matter which are at variance with normal Office Procedure. Most if not all of such items indirectly emanate from this anti cold fusion policy. The reasons for this policy and the improper lengths that the Office has gone to enforce it are obscure but are at least in part indicated in the Valone decision discussed on page 31 of the 2005 issue 64 of Infinite Energy.

In view of the facts relative to the required election of species in this case and the fact that the Applicant was not given the usual opportunity to "clarify" or further explain the election made in good faith in this case after this election was held insufficient as subsequently discussed there is at least an inference that the current decision is a part of the refusal by the Office to fairly examine this application as impliedly required by 35 USC 131. Under the circumstances it is reasonable to assume that the current decision noted is in pursuant to the PTO's anti cold fusion "secret law" and that it is pursuant to the "secret law" as is shown by the obviously abnormal or unusual prosecution of this history of this case.

The examiner assigned to this application, Mr. Palabrica, his supervisor and all others in Group 3600 or elsewhere in the Office who have been contacted in any way relative to the the subject matter of or any aspects of the prosecution of the this application are requested to reclude themselves from any further activity relative to this application. or relative to any consideration of any thing related to the subject matter or the handling of this application by the Office. In order to minimize allegations relative to this in the future it is considered that those who have may even had an indirect relationship to the subject matter or prosecution of this application should reclude themselves as requested.

Under the circumstances it is believed that further action on this application should be suspended until the Examiner who rendered the decision mailed Nov. 25, 2008 at least indicates on the record that he has not participated in the formation of the "secret law" practices by the Office, the application of this "law", even anything relative to the use or application of it and that his future in the PTO will not be influenced by anyone who has been involved with such matters. Further, this decision should be "suspended" or the like until the record is made clear . as noted so as to avoid at least any appearance of impropriety. Such action is requested.

#### The Suggested "Alternative Venue"

The Petitions Examiner is thanked for suggesting a "Alternative Venue" involving a

petition under 37 CFR 1.137 with respect to the subject matter of the current decision under 37 CFR 1.181. Such cooperation is to be encouraged in order to avoid complications such as are involved with this application.

Unfortunately someone in the PTO or elsewhere might construe that the Applicant accepted the precise wording of this suggestion as indicating his acquiescence in the implication that this application might be currently abandoned. The Applicant is certain that the holding of abandonment in this case is wrong and was improper and believes that it is a part of the application of "secret law" in various insidious ways to the present and other applications by the Applicant and others. In connection with this reference is made to subsequent sections of this document.

Unfortunately there is a problem with regard to the 37 CFR 1.137 procedure. Although the suggestion made by the Examiner includes items which must accompany such a petition his listing omits the terminal disclaimer required in connection with such a petition. Such a listing is clearly enumerated in the form document included with this decision under the (3) heading pertaining to the items required with such a petition. .

To the best of Applicant's knowledge this requirement for a terminal disclaimer has not been abolished and is still in force. As the Applicant understands the applicable law such a terminal disclaimer is still required by the Office. If the requirement for it has been abolished or is no longer required as indicated by its omission from the listing of required items in the pending decision the Examiner is requested to immediately so advise the Applicant. In view of this omission and the other facts in this case relative to the application of an Office policy pertaining to the use by the Office of various insidious ways of avoid fairly treating this application on its merits one could at least argue that the current decision is but another instance in which the noted policy has been applied.

The use of a terminal disclaimer in this case is considered to be at least undesirable and perhaps to amount to a complete disclaimer of the such matter claimed. The Applicant has been advised that there are serious legal questions as to the use of a terminal disclaimer in this case and that the use of such a disclaimer might automatically result in the loss of his right to patent protection on the claimed subject matter. This is because of the very early filing date to which the claimed subject matter is entitled.

Under the circumstances was there a reason as to why this "Alternative Venue" was suggested and as to why the terminal disclaimer requirement was omitted from the apparently well meaning suggestion? A clarification would be helpful in clearing up any undesirable

inferences which might be made. So would a statement as to whether the Petitions Examiner acting of this case is outside of the scope of the recusal request which has not yet been acted upon.

The Office Rules Have Limited What Was Stated  
In An Effort To Comply With The Required Election.

Both the affect the the effect of the improper and confusing situation relative to the required election of species in this case is considered to be no bar as to a reasonable person concluding that it is clear that this election was required in applying the “secret law” relative to cold fusion enforced by the Office. Further the details of this required election are so stated that it is considered that a reasonable person could not fully comply with it because of the nature or the claimed invention. This election simply does not make sense in view of the facts of this case.

Upon a review of prior documents it is considered that perhaps the “goofed up” nature of this required election was not previously made clear in an effort to avoid using what is regarded as basic, undesirable language and in fear that a reasonable discussion of this matter would result in the required response being held as improper and refused entry as a result of the Examiner who made the election requirement being criticized. It is noted that on a prior occasion a charge was made that the Applicant’s remarks were improper and that this charge was reversed.

The nature or the problem of what can be stated without detrimental consequences relates to the fact that in a sense anything indicating an error or mistake by an examiner can be taken as criticism of the examiner. Thus, it seems that the Office Rules permit an examiner from taking ac action detrimental to an applicant whenever he is criticized. It is hoped that this is not the Office policy, but if it is not where is there anything in the Rules precluding an examiner from acting detrimentally to an applicant when ever he or she does not like remarks pointing out wrong doing or errors in judgment?

The apparent Office policy in connection with what can be stated in a response had the effect of blocking a full response to the required election. Was this proper?

It Is Requested that Required Improper Election of Species And Actions Taken In Response  
To It Be Stricken from The File Of This Application ;  
This Request Is To Be Considered As A Petition To This Effect.

In view of the effect of the Office procedure influencing an applicant, and in particular the Applicant ~~ant~~ in the case from fully and completely responding to an Office “goof up” such as the required election in this case and presumably resulting in the Petitions Examiner creating a confused maze of statements in his decision it is submitted that this petition should be considered as if the election had not been made and as if the remarks ~~to~~ in the decision should be ignored. It is requested that both be stricken from the record in this case and that the holding of abandonment be withdrawn. The Office is petitioned to take such action. No other way of straightening out the present erroneous situation is apparent. If any other solution to the present status of this Applicant is known to the Petitions Examiner he is requested to communicate it to the Applicant.

### The Required Improper Election of Species

The problems with respect to the required election relates to the question as to when such an election is proper. Nowhere does the MPEP specifically hold that even such an election is proper or required when, as in this application, an applicant is obviously claiming one invention. It is and was improper to play word games to distort the meaning of words in order to attempt to justify an erroneous action, especially when such action causes confusion. Because of this reconsideration of the entire history of the election and the action taken in response to it is requested.

Sections 806 to 806.05(c) of the MPEP pertain to when an election may be properly required. Nowhere in the MPEP or in any decision known to the Applicant is there any precise definition of what constitutes a “species” in connection with an electrochemical invention such as is claimed in this case or in even the usual type of species situation. In view of the content of the decision currently under consideration and whether it should be withdrawn or otherwise canceled or bypassed it is considered necessary to consider whether or not there was a valid, understandable election requirement.

It is clear that there was not. From several common dictionaries it is evident that “species” is primarily a botanical term having no direct meanings in connection with any form of chemistry, and especially electrochemistry and has no clear meanings in a complex chemical or mechanical situation corresponding to the claimed invention. . The Compact Edition Of The Oxford English Dictionary, thirteenth edition, copyright 1971 by the Oxford University Press, verbosely defines it in a number of ways. The initial definition in it defines the term as “*Appearance, outward form*”; the second definition pertains to a Christian religious belief; the third defines the term as “*the outward appearance or aspect, the subtle form of image, of something, as constituting the immediate object of vision*”; the fourth defines the term as “a

*thing seen' a spectacle..."* Other subsequent definitions which are considered to be of lesser significance to the present discussion are set forth in this dictionary.

None of these definitions apply to a simple essentially chemical process as claimed in various related manners in the claims of this case. The two alleged species "A" and "B" covered by the required election do not reasonably come within any of these definitions. The MPEP does not define what the Office has considered to be species in a case such as the present. Since there is no accepted definition which reasonably relates the A and B subject matters it is apparent that the requirement for an election of species was improper. Is the PTO precluded from admitting an error in this situation?

#### The Required Election And Must Or Should Be Disregarded Because It Was Improper

The required election was also improper and must or should be disregarded since the A and B subject matters between which an election was required are far from being independent and distinct. As stated in the Manual section 806: "(C) *Where inventions are related as disclosed but are not distinct as claimed, restriction is never proper.*" The required restriction was improper because the subject matters of claims 13 and 21 clearly relate to the same inventive concept - the concept of passing a current through an electrolyte as claimed. This automatically produces heat and causes radioactivity. Both occur at the same time. Both occur as a result of the passage of a current. You can't get one of these results without obtaining the other with a process as claimed. .

The Petitions Examiner apparently failed to understand this. This is indicated by the second sentence in the last paragraph on page 2 of the current decision in which it is stated:

*Applicant was required to elect between a species in which the electrolyte is heated only and a species in which the electrolyte is both heated and caused to become radioactive and not elect between claims.*

This quotation shows that election required by the Examiner was in error. No where is there any basis for the erroneous statement that in practicing the claimed invention that only the electrolyte is heated in any manner of practicing the claimed invention.

Apparently this error is the result of a misstatement to the effect that "comprising" in a claim limits the coverage of the claim to precisely its contents. The error of this is so basic that it is considered that there is no need to cite authority in connection with it.

It is noted that this last quotation pertains to an election between species, not between inventions. The MPEP 806(C) does not even mention species in indicating when an election is improper. It clearly does not define define species in a situation such as the present. How can

a process in which concurrently an electrolyte is heated as radioactivity is produced as a result of such heating constitute different inventions? These is especially the case where the subject matters of the claims subject to the election requirement are as closely related as in this case. This is particularly the case since it appears that nothing else of significance is accomplished by such heating,

This matter is considered to be even worse than this would indicate. Section 806 (C) of the MPEP in indicating when restriction is improper does not even use the word "species". Since it is not believed that there is any authoritative definition of this word and since the MPEP does not use it in indicating when restriction is improper the reference to species in the decision under consideration is improper and this decision should be withdrawn. Its content indicates that it was based upon an erroneous application of the applicable law.

The fact that there was no valid requirement for an election of claims or species is particularly evident because it is apparent that all of the claims in the application are based upon on an obviously erroneous understanding of the invention set forth in the application. This is especially the case since it can be believed that the election requirement and the decision under consideration were made pursuant to "secret law" as evidenced by the SAWS documents of record.

How can the claims of the A and B parts of the disputed election requirement be independent and distinct inventions? The fact that they are not is made clear by the Section 806.03 of the Manual which clearly states:

*"Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breath or scope of definition."*

Claims 13 and 21 mentioned in the A and B statements are clearly and obviously related to the same disclosed subject matter. According to this quotation from the Manual the fact that they differ in breath or scope is immaterial in determining whether or not claims define the same essential invention".

It would appear that the decision discussed is in minor part based upon the fact that the claims presented differ is scope because of the manner in which they are worded and that they vary in scope or breath. If part of the decision is based upon such view the Petitions Examiner is again requested to refer to the MPEP, and in particular to the last sentence of the

preceding quotation. Does the Examiner hold the opinion that the claims presented in an application define separate and distinct invention merely because they differ in scope? Or that when they are worded using a word such as “comprise” that the claim has a scope such that it can cover an item which is not precisely defined in it?

#### This Application Has Not Been Abandoned

In a sense all of the preceding discussion has been ancillary to the basis issue as to whether the conclusion of the Petitions Examiner that this application was abandoned is correct. It is submitted that it is not. Reconsideration of this matter is requested in connection not only with matters formally in the record of this application but in addition with related matters including the issue as to whether or not the Applicant has received a fair consideration of this application, especially as the latter is reflected by the at best “unusual” prosecution of this application

Isn't the overly technical, The fact that the MPEP ignores the need for a definition of “cold fusion” and anti cold fusion prosecution of this application secondary evidence that the required election in this case is a part of a not publicly announced campaign against the acceptance of cold fusion? Why hasn't the PTO announced the repudiation of the SAWS documents in so far as they apply to cold fusion? Has any patent been issued on cold fusion and not repudiated? Has any patent application which has been “flagged” or “tagged” or otherwise identified pursuant to a procedure indicated in the SAWS documents ever has been treated “normally” after being so identified and handled as indicated by SAWS materials.

And there are questions as to the SAWS materials and policies. Is it true that that the Office in order to avoid possible criticism by an author, a stage magician or a member of a Congressional appropriations committee (or a staff member of such a committee) or an officer of some agency who wrote a book setting forth the conclusion that cold fusion was impossible? Isn't it true that the examiner who has been acting on this application is as technically up to date as a member of a flat earth society or someone who does not believe in the existence of such items as viruses because you cannot see them?

Has or has not the consideration of this examination been completely at his discretion or was it at least in part pursuant to documents or statements given to him by the Office? Questions have also been raised as to whether or not this case has been improperly examined in an effort to gain a financial benefit by blocking the investigation and use of cold fusion technology? It is hoped that the latter is not the case, but it is easy to understand from the prosecution of this and an unknown number of other applications that this could be the case .



In view of the existence of questions such as the preceding isn't it time for the Office to start to try to regain a widely recognized decent reputation by disclosing its non statutory policies pertaining to cold fusion to the public in public ally accessible patent files or in other manners matters such as are indicated by the requests and questions raised by this document. The longer the facts as to the manner in which this and other applications pertaining to cold fusion remain hidden the consequences of its behavior will be harder and more costly it will be for the Office to deal with, especially as such facts become generally known.

In a sanctimonious manner the Petitions Examiner may chose to ignore questions such as those indicated in the preceding and others of a related nature. But would this be fair? Isn't it obvious from the prosecution of this case as well as from the content of the outstanding decision that this case has not ben examined in a normal manner and that the Office has "thrown the book" at the Applicant in an effort to avoid fairly dealing with this case. The goofed up election required by the Examiner to which this case was assigned is current evidence of this. If this case is to be fairly examined on its merits the holding of abandonment must be reversed. This is respectfully requested.

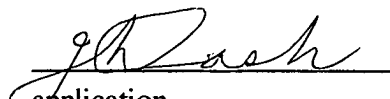
As previously noted the MPEP holds that restriction is never proper between related inventions. Contrived allegations that it pertains to more than single generic embodiment are improper as have been made in the required election and presumably as a result of a misunderstanding of the case in the decision are not evidence that the Applicant intended to provide an incomplete response to the required election. Instead they are evidence of the fact that the Office has failed to fairly examine the application involved and has and has and continues to enforce discriminatory treatment in cases such as this, especially when it is apparent that the Applicant has reasonably responded to the required election, especially since this election was improperly made and was worded as to to cause confusion.

The undersigned Applicant clearly made a legitimate attempt to respond to it by an election which did not deliberately insult the Examiner who made the election requirement which was worded in an attempt to be "proper" in spite of the improper Byzantine character of the requirement. In other circumstances actions as have been taken in this case have not caused a forfeiture of patent rights. Why is the PTO departing from this policy in this case?

Since the basis reason for this appears to involve the aspects of the "secret law" practiced and ednorced by the Office and since in substance the Applicant has complied to the extent reasonably possible with the Office requirements in connection with a clearly improper election requirement a reversal of the holding of abandonment of this application is requested. As previously indicated you are also requested to purge from the record in this case

case the requirement for an election and all subsequent contents of the file relative to this application pertaining to this subject matter.

Respectfully submitted -

 (John Dash) on behalf of himself and the assignee of the noted application

1-16-09